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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,016	03/06/2001	Jeffrey A. Livesay	Wellogix-002:CIP	1305
21897 7590 12/13/2007 THE MATTHEWS FIRM 2000 BERING DRIVE SUITE 700 HOUSTON, TX 77057			EXAMINER COLBERT, ELLA	
			ART UNIT 3694	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/801,016

Applicant(s)

LIVESAY ET AL.

Examiner

Ella Colbert

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 22-25, 34, 51, 54 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 22-25, 34, 51, 54 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. Claims 14, 15, 22-25, 34, 51, 54, and 64 are pending. Claims 1, 15, 22-25, 34, 51, 54, and 64 have been amended in this communication filed 9/18/07 entered as Response After Non-Final Action and New or additional Drawings. Claim 65 has been cancelled.
2. The Objections to drawing fig's 8C, 9B, 16C-16L, 19A, 19D, and 19F have been overcome by Applicants' resubmission of the drawings and are hereby withdrawn.
3. The Objections to the Specification have been overcome by Applicants' submission of a substitute Specification and are hereby withdrawn.
4. The claim objections for claim 1 has been overcome by Applicants' amendment and are hereby withdrawn.
5. The 35 USC 112, second paragraph rejections for claims 1 and 51 still remain rejected as set forth here below. Claim 65 has been cancelled and therefore the rejection of claim 65 is moot.
5. The 35 USC 101, rejection still remains as set forth here below.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, is unclear and vague who or what and

whether it is a device or buyer (customer) obtaining the estimated data from any source, comparing actual data to the estimated data and notifying the seller of any discrepancy.

Claim 51, it is unclear and vague who or what is receiving "the at least one first response" and "the at least one second response", comparing the at least one first response" and "presenting the comparison to the buyer". Is the "buyer receiving the first response" and "the second response", "comparing the first response", or is the seller the one who is performing these steps or is some device performing the steps? Is it the seller or some device presenting the comparison to the buyer?

Claims 22 and 64 are clear as written because it is understood who and what is doing each step.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-4, 15, 22-25, 34, 51, 54, and 64 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Under the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, a claimed invention must satisfy the requirement that it be directed to a "practical application," which is to mean "the claimed invention physically transforms an article or physical object to a different state or thing, or ... the claimed invention otherwise produces a useful, concrete and tangible result". If a claim satisfies those questions, then the claim describes eligible subject matter.

In the instant case, the claimed invention does not physically transform an article or a physical object to a different state or thing since the claim is not directed to an article or physical object. Therefore, a relevant test to determine if the eligibility requirement is met is whether the claimed invention as a whole is limited to a useful concrete and tangible result.

The following definitions are used as guidelines in determining whether the claimed invention produces a useful, concrete and tangible result, as discussed in MPEP 2106 IV C (2).

Useful- must be specific, substantial and credible and specifically recited in the claim. If the claim is broad enough to not require a practical application, it must be rejected.

Tangible –must be some “real-world” result, not abstract.

Concrete –must have a result that can be substantially repeatable or the process must substantially produce the same result again.

Claim 1 recites the steps for obtaining estimated data from any source, receiving the actual data from the seller, comparing the actual data to the estimated data to determine a discrepancy between the actual and estimated data, and notifying the seller if there is a discrepancy with the seller accounting for the discrepancy. The method of obtaining estimated data and actual data and making a comparison and determining a discrepancy and accounting for the discrepancy is considered a manipulation of data and performs no concrete, useful or tangible result. Claims 22 and 51 have a similar problem.

Claims 2-4 and 15 inherit the limitations of the parent claim and are therefore rejected as addressed above for claim 1.

Claim 22 has a similar problem as addressed above for claim 1 because **no result is achieved at the end of the process. The estimated and actual data and determining a discrepancy and accounting for the discrepancy does not produce a concrete, useful, or tangible result.**

Claims 23-25 and 34 15 inherit the limitations of the parent claim and are therefore rejected as addressed above for claim 22.

Claim 51 has a similar problem as addressed above in independent claims 1 and 22.

Claim 54 inherits the limitations of the parent claim and are therefore rejected as addressed above for claim 51.

Claim 64 has a similar problem as addressed above for independent claims 1, 22, and 51.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by "Primavera and PurchasePro. Com" (Business Wire, 9/21/99).

Claim 1. "Primavera and PurchasePro. Com" discloses A process for reconciling actual data with estimated data within said process for a project ordered by a buyer and performed by a seller, the method comprising:

obtaining and storing the estimated data from any source relating to the project;

receiving and storing the actual data from the seller via a communication network;

comparing the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data; and causing the process to notifying the seller of any discrepancy, wherein upon notice of the discrepancy the seller can account for the discrepancy. Primavera and PurchasePro.com disclose obtaining the estimated data from different manufacturers for a construction project, receiving the actual data from a seller via the Internet (a communications network) (Page 1-Page 2, line 15); comparing the actual data to the estimated data for any discrepancy (page 2, lines 22-27) and notifying the seller of any discrepancy ..." (page 2, lines 28-35). It is considered inherent to notify the seller of any discrepancy and for the discrepancy to be accounted for by the seller.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 2-4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primavera and PurchasePro.com and (US 5,826,244) Huberman.

Claim 2. Primavera and PurchasePro.com failed to disclose, A process for reconciling as described in claim 1, wherein the actual data comprises an actual cost , in whole or in part, of either goods or services or goods and goods and services provided by the seller in performance of the project. Huberman discloses, A process for reconciling as described in claim 1, wherein the actual data comprises an actual cost ,

in whole or in part, of either goods or services or goods and goods and services provided by the seller in performance of the project (col. 11, lines 4-15).

Claim 3. Primavera and PurchasePro.com discloses, A process for reconciling as described in claim 1, wherein the actual data comprises an actual accounting un whole or in part of either goods or services, or goods and services provided by the seller in performance of the project (page 1, paragraph 8).

Claim 4. Primavera and PurchasePro.com failed to disclose, A process for reconciling as described in claim 1, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project. Huberman discloses A process for reconciling as described in claim 1, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project (col. 14, lines 4-30).

Claim 15. Primavera and PurchasePro.com failed to disclose A process for reconciling as described in claim 1, wherein the workflow process generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter. Huberman discloses, A process for reconciling as described in claim 1, wherein the workflow process generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter (col. 13, line 54-col. 14, line 46).

Primavera and PurchasePro.com discloses, wherein the system converts the at least one parameter into the at least one request, and wherein the system communicates the at least one request to the seller (page 2, paragraph 2 and paragraph 3, and paragraph 5-paragraph 7).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 22-25, 34, 51, 54, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,826,244) Huberman in view of (US 4,903,201) Wagner.

Claim 22. Huberman discloses, A system for reconciling actual data compiled for a project by a seller with estimated data for the project, the project ordered by a buyer and performed by the seller, the system comprising:
a first interface for interacting with at least one buyer (col. 6, lines 5-19 and lines 44-56);
a second interface for interacting with at least one seller (col. 5, line 59-col. 6, line 4 and col. 8, line 66-col. 9, line 23). Huberman failed to disclose, a memory for storing the estimated data and the actual data, wherein the actual data is received from the seller field device via the second interface; and a processor controlling the memory, the first interface and the second interface, wherein the processor compares the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data, and wherein the processor notifies the buyer via the first interface of any discrepancy. Wagner discloses, a memory for storing the estimated data and the actual data, wherein the actual data is received from the seller field device via the second interface; and a processor controlling the memory, the first interface and the second interface, wherein the processor compares the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data, and wherein the processor notifies the buyer via the first interface of any discrepancy (col. 9, line 50-col. 10, line 67). It would have been obvious to one having ordinary skill in the

art at the time the invention was made to incorporate the teachings of Wagner in Huberman because such an incorporation would allow Huberman to have an accounting process with the components of a system for an accurate business environment.

Claim 23. Huberman discloses, A system for reconciling as described in claim 22 wherein the actual data comprises an actual cost in whole or in part, of either goods or services or goods and services provided by the seller in performance of the project (col. 12, line 10-43).

Claim 24. Huberman discloses, A system for reconciling as described in claim 22 wherein the actual data comprises an actual quantity in whole or in part, of either goods or services or goods and services provided by the seller in performance of the project (col. 13, line 54-col. 14, line 30).

Claim 25. Huberman discloses, A system for reconciling as described in claim 22, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project (col. 14, lines 31-46).

Claim 34. Huberman discloses, A system for reconciling as described in claim 22 wherein the system further comprises a system for implementing a process to generate at least one request for either at least one good or at least one service or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter, and wherein the system converts the at least one parameter into the at least one request', and

wherein the system communicates the at least one request to the seller (col. 9, lines 24-53, col. 11, lines 4-15, col. 13, line 40-col. 14, line 30, and col. 18, line 23).

Claim 51. Huberman discloses, A process in a system for comparing a first response to at least one second response, the first and at least one second responses responsive to at least one request by a buyer for at least one good/service for a project, the process comprising: receiving the first response at the workflow system via a communication network (col. 3, line 59-col. 4, line 30); receiving the at least one second response at the workflow system via the communication network (col. 4, lines 31-44); comparing the first response to the at least one second response (col. 4, line 45-col. 5, line 32); and presenting the comparison to the buyer through an interface with a buyer system via the communication network (col. 8, line 66-col. 9, line 53 and col. 10, lines 6-35). This independent claim is also rejected for the similar rationale as given above for claim 22.

Claim 54. Huberman discloses, A process in a system for comparing as described in claim 51, wherein the first response is provided by a first seller through an interface with a first seller system via the communication network, and the at least one second response is provided by at least one second seller through an interface with at least one second seller system via the communication network (col. 12, line 44-col. 13, line 38).

Claim 64. Huberman discloses, A system for comparing a first response to at least one second response, the first and at least one second responses responsive to at

least one request by a buyer for either at least one good or service, or at least one good and at least one service for a project, the workflow system comprising:
a buyer interface (col. 10, lines 22-35 and line 62-col.11, line 15); at least one seller interface for receiving the first response and the at least one second response from at least one seller (col. 9, lines 2-23 and col. 10, lines 6-21). This independent claim is rejected for the similar rationale as given above for claim 22.

Response to Arguments

15. Applicant's arguments filed 9/18/07 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' Argue: The steps of claims 1, 22, 51, and 64 do not involve the mere manipulation of data and they are concrete, useful, and have a tangible result has been considered but is not persuasive. Response: Applicants' are not understanding that the claim limitations do not have a result. The estimated data is obtained and stored, then the actual data is received, stored, and compared to the estimated data, and then the process notifies the seller of any discrepancy. There is not any concrete, useful, and tangible result achieved by these steps. Where is the result after these steps occur?

Issue no. 2: Applicants' argue: There is no teaching or even suggestion of obtaining and storing estimated data, receiving and storing actual data, comparing the actual data with the estimated data and notifying the seller of any discrepancy between the actual data, allowing the seller to account for any discrepancy has been considered but is not persuasive. Response: The Examiner has outlined in the pages and line

numbers along with inherency where the claim limitations of claim 1 are found in "Primavera and Purchase Pro. Com".

Issue no. 3: Applicants' argue: The Huberman '244 and the Wagner '201 references are non-analogous art and are silent as to the steps of storing estimating data, storing actual data, comparing the estimated data with the actual data, and notifying the buyer of any discrepancy, and notifying the buyer of any discrepancy has been considered but is not persuasive. Response: Huberman '244 patent and the Wagner '201 patent were not used to reject these claim limitations.

Issue no. 4: Applicants' argue: The Huberman and the Wagner patents, either taken alone or in combination fail to disclose, teach or even suggest the steps spelled out in claims 22-25, 34, 51, and 64 have been considered but are not persuasive. Response: In this case Huberman is interpreted as disclosing the actual data comprising an actual cost of either goods or services ... in col. 11, lines 4-15, the actual data comprises a measurement of a parameter ... in col. 14, lines 4-30, generating a request for either one good or one service ... with the project being defined in terms of at least one parameter in col. 13, line 54-col. 14, line 46 and the other missing limitations are interpreted as being taught by Wagner.

Conclusion: *Although the Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action, the specified citations are merely representative of the teachings in the art as applied to the specific limitations within the individual claim. Since other passages and figures may apply to the claimed invention as well, it is respectfully requested that the Applicant(s), in preparing the response, to consider fully the entire references as potentially teaching all of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the Examiner.*

The Applicant is respectfully requested to point out to the Examiner in the independent claim(s) the inventive concept of the invention.

The Examiner is entitled to give limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).<

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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December 9, 2007


ELLA COLBERT
PRIMARY EXAMINER